

DAMEON V. BAUMGARNER
Claimant

ELKHORN VALLEY PACKING
Respondent

**CONTINENTAL WESTERN INSURANCE
COMPANY**
Insurance Carrier

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ORDER

ISSUES

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Claimant alleges that he suffered accidental injury on or about January 14, 2003, when a carcass, which had earlier been split in half, fell off of the rail, landing across claimant's legs. However, several witnesses, who were in the immediate vicinity and who soon arrived at the location of the spilled beef, testified that claimant was standing upright within seconds of the incident. No one at the plant observed claimant lying under any carcasses or even lying on the floor. Additionally, witnesses who talked to claimant

immediately after the incident and two witnesses who heard those conversations were told by claimant or overhead claimant admit that the beef did not fall on him and that he was okay. These witnesses include coworkers, the kill floor lead man and the USDA veterinarian in charge of supervising respondent's plant.

The first mention that the beef may have landed on claimant, injuring his legs, did not occur until sometime later, when claimant was telling people in the break room that allegedly the carcass landed on him.

Claimant provides no explanation for the total lack of witnesses to support his allegations of an injury. Additionally, claimant does not explain how he managed to remove approximately 1,200 pounds of beef carcass from his legs in a matter of only a few seconds.

In workers' compensation litigation, it is claimant's burden to prove his entitlement to benefits by a preponderance of the credible evidence.¹ The Board finds, as did the Administrative Law Judge, that the testimony of claimant is not credible when weighed against the testimony of the various witnesses who were present at the time of the alleged accident. The Board, therefore, finds that claimant has failed to prove that he suffered accidental injury arising out of and in the course of his employment as alleged.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order of Administrative Law Judge Nelsonna Potts Barnes dated September 9, 2003, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of November 2003.

BOARD MEMBER

c: Robert R. Lee, Attorney for Claimant
Ronald J. Laskowski, Attorney for Respondent
Nelsonna Potts Barnes, Administrative Law Judge
Paula S. Greathouse, Director

¹ K.S.A. 44-501 and K.S.A. 2002 Supp. 44-508(g).